Supreme Court, U. S.
FILED
JUL 16 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

October Term 1975

No. 75-1413

WAYNE A. STANTON, individually and in his capacity as Administrator of the Indiana State Department of Public Welfare;

MARION M. HILGER, ROBERT M. CURLESS, ARVELLA M. STANTON, ROBERT G. WATSON, JR., JAMES W. BURNETT, JR., individually and in their capacity as members of the State Board of Public Welfare,

Petitioners,

vs.

LOUISE BOND, individually and on behalf of her minor children;

ROSE EDWARDS, as President, NEW DAY WELFARE ORGANIZATION, an unincorporated association;

SARA JUDE, as President, GARY AFDC MOTHERS' ORGANIZATION WELFARE RIGHTS ORGANIZATION, an unincorporated association;

NORMA JEAN MOORE, as President, EAST CHICAGO WELFARE RIGHTS ORGANIZATION, an unincorporated association; individually and on behalf of all others similarly situated,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED APRIL 6, 1976
WRIT OF CERTIORARI GRANTED JUNE 1, 1976

Central Publishing Company, Inc., Indianapolis, Ind. 46206

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APPENDIX

CIVIL DOCKET

UNITED STATES DISTRICT COURT

LOUISE BOND, individually and on behalf of her minor children; ROSE EDWARDS, as President, NEW DAY WELFARE RIGHTS ORGANIZATION, an unincorporated association; SARAH JUDE, as president, GARY AFDC MOTHERS' ORGANIZATION WELFARE RIGHTS ORGANIZATION, an unincorporated association; NORMA JEAN MOORE, as President, EAST CHICAGO WELFARE RIGHTS ORGANIZATION, an unincorporated association; individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

WAYNE A. STANTON, individually and in his capacity as Administrator of the Indiana State Department of Public Welfare; MARION M. HILGER, ROBERT M. CURLESS, ARVELLA M. STANTON, ROBERT G. WATSON, JR., JAMES W. BURNETT, JR., individually and in their capacity as members of the State Board of Public Welfare; JOHN KELLEY, individually and in his capacity as Director of the Lake County Department of Public Welfare,

Defendants.

ATTORNEYS

For plaintiff:

Seymour Moskowitz
Project Justice and Equality
1109 N. Union Street
Gary, Indiana 46402

Lawrence Albrecht
1322 S. 16th Street
Milwaukee, Wisconsin 53204
414-671-6940

Ivan E. Bodensteiner & Wayne Defferding
Valparaiso University School of Law
Valparaiso, Indiana 46383

For defendant:

For deft. John Kelley, Individually and as Director of the Lake County Dept. of Public Welfare:

John P. Segovia
800 Massachusetts Street
Gary, Indiana 46402

For defts: Anna S. Rominger & Norman D. Curry

Deputy Attorney General

Arthur E. Murphy
Donald Bowgard
317-633-5514
219 State House
Indianapolis, Indiana 46204
633-6278

J.S. 5 mailed 8/73

J.S. 6 mailed 4/74
Complaint for Inj. Relief

Basis of Action: T.42,S.1983
Re-medical assistance

Pauper
4/12/74 Aty. Gen. 5.00
(Notice of Appeal)

4/15/74 TREAS. 5.00

Date	PROCEEDINGS
7/23/73	1. Plaintiff files Pauper Affidavit. Order entered thereon granting plaintiff leave to proceed in forma pauperis. (SE) Beamer:J (Order dated 7-19-73 but not received in Clerk's Office until 7-23-73)
7/23/73	2. Complaint filed.
7/23/73	3. Motion for Preliminary Injunction filed. Summons issued and forwarded to U. S. Marshal.
7/30/73	4. Summons returned served on John Kelley on 7/26/73. (5.40)
8/ 3/73	5. Summons returned served on Wayne Stanton, Director on 7/26/73 (4.00)
	6. Summons returned served on Marion M. Hilger on 7/26/73. (4.00)

7. Summons returned served on James W. Burnett, Jr. on 7/26/73. (4.00)

8. Summons returned served on Robert Watson, Jr. on 7/26/73. (4.00)

9. Summons returned served on Arvella M. Stanton 7/26/73. (4.00)

10. Summons returned served on Robert M. Curless on 7/26/73. (4.00)

8/ 9/73 11. John P. Segovia, 800 Massachusetts Street, Gary, Indiana 46402 enters appearance for defendant, John Kelley, individually and as Director of the Lake County Department of Public Welfare.

8/20/73 12. Arthur Murphy, Dept. Atty. Gen. enters his appearance for defts.

13. Defts. file Motion for Enlargement of time, with p.s.

8/22/73 14. Pltfs. file Interrs. to deft. Wayne Stanton with p.s.

8/21/73 15. Order: Defts. have to and including 9-14-73 to file answer. GNB

9/17/73 16. Defendants file Motion for Summary Judgment with Memorandum thereon and certificate of service thereon.

9/25/73 17. Defts. file Answers to pltfs' interrs. and objs. to interrs. with p.s.

10/ 1/73 18. Pltfs. file Motion for Summary Judgment with p,s.

19. Pltfs' file Memo in support of motion for summary judgment with p.s.

10/23/73 20. Court will hear cross-motions for summary judgment on Monday, 11/5/73 at 1:30 p.m.

11/ 5/73 21. Plaintiffs appear by counsel, Seymour Moskowitz, co-counsel Lawrence Albrecht, co-counsel Ivan Bodensteiner and co-counsel Wayne Defferding.

Defendants appear by Arthur E. Murphy, Deputy Attorney General

Defendants motion for summary judgment is presented to the Court.

Arguments heard on deft's motion for summary judgment and also on Plftf's. motion for summary judgment. Matter is taken under advisement and is continued for finding until Feb. 4, 1974.

Each side is ordered to furnish the Court with further evidence or material in support of their respective motions.

11/ 5/73 22. Wayne C. Defferding enters his appearance as Legal Intern for pltfs'/

11/ 8/73 23. Order: The hearing on cross-motions for summary judgment is hereby continued to Feb. 4, 1974, with the parties given the option to file additional and supplemental material under Rule 56. (SE) Allen Sharp, Judge (cpies toJohn P. Segovia, Lawrence Albrecht & Wayne Defferding Seymoour Moskowitz and Arthur E. Murphy)

12/13/73 Court Reporter files Report of Proceedings held Nov. 5, 1973.

(Richard L. Fissinger, Court Reporter)

1/14/74 24. Plaintiffs files Motion for Order to Depose Witnesses with Memorandum in Support thereof with certificate of service thereon.

1/14/74 25. Order entered allowing plaintiffs to depose witness by means of a tape recording device. (SE) Allen Sharp, Judge (copies to counsel)

2/ 1/74 26. Defendants file Affidavit with certificate of service thereon.

2/ 5/74 27. Pltfs. file Motion for Enlargement of time with cer. of ser.

28. Order entered: that an enlargment of time be granted up to and including the 25th day of Feb. 1974 in which to file additional and supplemental material. (SE) Allen Sharp, Judge (copies to: Moskowitz, Albrecht, Segovia and Murphy)

2/27/74 29. Order entered: It is Ordered that the pltf. be given an extension of time until and including March 1, 1974, for the limited purpose of preparing depositions already taken for filing. (SE) Sharp Copies to: Moskowitz, Albrecht, & Defferding, Segovia, and Murphy.

2/25/74 30. Motion for Enlargement of Time filed by Pltfs. with Cert. of Service.

2/25/74 31. Pltfs. file Supplemental Brief in Support of Pltf's. Motion for Summary. Judgment, with cert. of service.

3/ 1/74 Depositions of Wayne A. Stanton, Marion Steffey, John Kelley, Elizabeth Vallance filed.

3/ 5/74 32. Letter to Judge Sharp from Ivan E. Bodensteiner, dated March 4, 1974

3/ 5/74 33. Defendants, Wayne A. Stanton, etc., file Motion to Strike and in the Alternative Motion for Leave to File Reply Brief with certificate of service attached thereto.

3/ 7/74 34. Order entered: Defts. Wayne A. Stanton, Marion M. Hilger, Robert M. Curless, Arvella M. Stanton, Robert G. Watson, Jr., James W. Burnett, Jr., by their counsel, the Attorney General for the State of Indiana, have filed a Motion to Strike andin the alternative, a Motion for leave of court to file reply biref. Thse two motions are DENIED. (SE) Allen Sharp, Judge
Memoandum attached thereon.

(copies to: Moskowitz, Albrecht & Defferding, Segovia and Att. of Ind.)

3/11/74 35. Att. Gen. of Ind. files Defts' Supplemental Response with cer. of ser.

3/22/74 36. *MEMORANDUM OPINION ORDERED ENTERED:* Deft's. motion for summary judgment is DENIED.

Pltf's. motion for summary judgment is GRANTED in part and DENIED in part.

Defts. are ordered to have program of Early and Periodic, Screening, Diagnoses and Treatment in effect in every county in Ind. by 7/1/74. Ruling on pltfs. request for atty. fees will be reserved pending the filing of supplemental briefs. Pltf's. request for compensatory and punitive damages is DENIED.

Pltf's. request to appoint a receiver is DENIED. Pltfs. are denied all other relief at this time. This Order is intended to be a final judgment as to the claims decided. (SE) Sharp, Judge. Copies to counsel.

4/12/74 37. Defendants, Wayne A. Stanton, Marion M. Hilger, Robert M. Curless, Arvella M. Stanton, Robert G. Watson, Jr., James W. Burnette, Jr. and John Kelley, file Notice of Appeal.

4/12/74 38. Clerks certificate of mailing issued. (copies to counsel)

5/ 3/74 39. Defts., Wayne A. Stanton, Marion M. Hilger, Robert M. Curless, Arvella M. Stanton, Robert G. Weston, Jr. and James W. Burnett, Jr., file Petition for Stay of Proceedings with proof of service attached thereto.

5/ 6/74 40. Order entered granting plaintiffs 20 days to respond to defts.' Petition for Stay of Proceedings. (SE) Allen Sharp, Judge (copies to counsel)

5/10/74 41 Plaintiffs file Memorandum Opposing Stay Pending Appeal with certificate of service thereon.

5/17/74 42. Defts. Wayne A. Stanton; Marion M. Hilger, Robert M. Curless, Arvella M. Stanton, Robert G. Watson, Jr. and James W. Burnett, Jr. file Supplemental Petition for Stay of Proceedings.

5/17/74 43. Order entered: The petition for stay of proceedings pending appeal filed May 3, 1974 by defendants Wayne A. Stanton, Marion M. Hilger, Robert M. Curless, Arvella M. Stanton, Robert G. Watson, Jr. and James W. Burnett, Jr. is GRANTED. (SE) Allen Sharp, Judge (copies to counsel)

5/20/74 Record on Appeal forwarded to U. S. Court of Appeals via mail.

6/ 5/74 Plfts. file Motion for Production of Documents, with cer. of ser. thereon.

6/ 5/74 ORDER ENTERED: Defts. are hereby given 20 days from this date to respond to pltf's. motion for production of documents filed June 5, 1974. (SE) Sharp, Judge. Copies to counsel.

6/13/74 Order Entered From Court of Appeals:

That the Motion to vacate the stay shall be and the same is hereby DENIED.

That the Appellant's brief shall be filed on or before July 3, 1974; the Appellee's brief thirty days thereafter; and a reply brief, if any, fourteen days thereafter. No extensions of time will

be granted barring exceptional and unforeseen circumstances. Oral argument in this appeal will be heard during the week of Sept. 9, 1974.

6/28/74 Anna S. Rominger, Deputy Attorney General, 219 State House, Indianapolis, Indiana, enters appearance for defendants, Wayne A. Stanton, Marion Helger, Robert Curless, Arvella Stanton, Robert Watson, Jr. and James W. Burnett, Jr.

6/28/74 Defendant, Wayne A. Stanton, files Motion for Protective Order with Memorandum in Support thereof.

7/17/74 Pltf. files Motion for Order Compelling Discovery with Memo in Support of Motion with cer. of ser.

7/18/74 Anna S. Rominger, Dept. Att. Gen. of Ind. enters her appearance for defts.

7/19/74 Order entered: Pltfs' Motion for an Order Compelling Discovery, filed July 15, 1974 is GRANTED. Deft. Wayne A. Stanton, Admr. of the State Department of Public Welfare, is ordered to produce documents which were requested in Pltfs' Motion to Produce filed on June 5, 1974 within 20 days. Deft's Motion for a Protective Order is DENIED.

Pltfs. will have until Sept. 30, 1974 to file any and all briefs directed to the issue of the award of attorney fees. Deft. will have 30 days from the filing date of pltfs' briefs within which to file a response.. (SE) Allen Sharp, Judge
Memorandum filed thereon.

(copies to: Moskowitz, Albrecht, Bodensteiner, Segovia, and Att. of Gen. of Ind.)

9/16/74 Petitioner Lawrence George Albrecht files Verified Petition to Appear Pro Hoc Vice with cer. of serv. HB

9/17/74 Order entered: Petitioner, Lawrence George Albrecht, is hereby granted leave of court to appear Pro Hac Vice. (SE) Allen Sharp, Judge (copies to: Moskowitz, Albrecht, Bodensteiner & Defferding, Segovia and Att. Gen. of Ind.) HB

10/ 1/74 Plfts. file Memo. of Law in Support of Request for Attorney Fees, with cer. of ser. thereon.

10/31/74 Slip sheet from Court of Appeals received and filed showing decision of this court AFFIRMED.

10/31/74 State of Indiana, Defts. files Motion for Enlargment of time.

10/31/74 Order entered: That Defts. Wayne Stanton et al are given until Nov. 15, 1974 to file their breif in Opposition to Pltfs. Memorandum of Law in Support of Request of Attorney's Fees. (SE) Allen Sharp, Judge (copies to all counsel)

11/20/74 Defts. files Memo in Opposition to Pltf's Request for Atty. Fees. with cer. of ser. thereon.

11/20/74 Defts. file Notice of Request for a Hearing, with cer. of ser. thereon

12/ 3/74 Pltfs' Reply Memorandum Regarding Attorney Fees filed. HB

1/13/75 Order Entered: It is Ordered that the Pltfs. request for Atty. fees is Granted and the Defts., Wayne A. Stanton, Marion Hilger, Robert Curless, Arvella Stanton, Robert G. Watson, Jr. and James Burnett, in their official capacities are hereby ordered to pay the sum of $2,366.00 to the pltfs. as atty. fees. It shall be paid directly to the atty.s for the two organizations involved and it will be their responsibility to divide the funds between the organizations. Pltfs. are also awarded costs pursuant to Boston Chapter, NAACP, Inc. v. Beecher, F. 2d, (1st Cir. 1975), 43 U.S.L.W. 2228, dec. Nov. 8, 1974. (SE) Sharp, Judge. Copies to counsel.

1/20/75 Cert. copy of order received from Ct. of Appeals: This matter comes before the Court on the "Pltfs-Appellees' Motion to Vacate Stay and for Immediate Issuance of Mandate" filed herein on Dec. 16, 1974. On consideration whereof,

IT IS ORDERED that said motion be, and the same is hereby, GRANTED.

1/20/75 Received cert. copy of order from Court of Appeals: On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day. HB

FILE TO BE RETURNED AT A LATER DATE.

1/24/75 Pltfs. file Motion for Issuance of Order Mandating Implementation of This Court's March 22, 1974 Declaratory Judgment and Injunction, with cer. of ser. thereon.

1/24/75 Order entered:

(a) Defts. shall submit a proposed plan for implementation of EPSDT to the court within thirty (30) days.

(b) Within ten (10) days of the filing of the defendant's plan, pltf. shall submit written comments and/or objections to defts. and the court.

(c) Within ten (10) days of the filing of plaintiff's comments and/or objections, the parties will meet and attempt to resolve any differences regarding the proposed plan.

(d) Within ten (10) days of such meeting or meetings, counsel for pltfs. will submit a detailed written report to the court summarizing the parties agreements and remaining differences.

(e) Within ten (10) days of such report the parties shall confer in court about any remaining differences. (SE) Allen Sharp, Judge

(copies to counsel)

2/10/75 Pltfs. Wayne A. Stanton, Marion Hilger, Robert Curless, Arvella Stanton, Robert J. Watson, Jr. and James Burnett file Notice of Appeal.

2/10/75 Clerk's certificate prepared and distributed.

2/19/75 Att. Gen. of Indiana files Motion for Enlargement of time to comply with court order with cer. of ser. HB

2/26/75 Pltfs. file Objection to Defts'. Motion For Enlargement Of Time, with cer. of ser. thereon.

2/24/75 Defts. file Duplicate Motion for Enlargement of Time to Comply With Court Order, with cer. of serv. thereon.

2/26/75 Order Entered: The motion for enlargement of time to comply with the Court Order of Jan. 24, 1975, is Granted as follows:

Deft. Wayne A. Stanton is given an extension of time up to and including March 5, 1975, in which to comply with this court's order of Jan. 24, 1975. (SE) Sharp, Judge. Copies to counsel.

3/ 6/75 Dept. of Public Welfare files their Plan of Implementation of Indiana's Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program for children of families who are recipients of Assistance to Families with Dependant Children (AFDC). HB

3/14/75 File forwarded to Court of Appeals. (Second part of file).

First part of file never returned from Court of Appeals.

3/17/75 Filed Pltfs' Response to Defts' EPSDT Plan and Request for time for Discovery filed with cer. of ser. HB Order to Judge

3/27/75 Pltfs. file Motion for Production of Documents, with cer. of ser. thereon.

3/24/75 Order entered:

1. Pltfs. are granted leave to and including April 18, 1975, in which to complete discovery regarding the defendants' proposed EPSDT plan
2. Pltfs. are granted leave to take depositions during that time pursuant to the provisions of the earlier Order entered by this Court regarding depositions by tape recording:
3. The defts. are ordered to respond to a timely filed Motion for Production of Documents within ten (10) days after service of the Motion; and
4. Pltfs. are granted leave to and including April 28, 1975, in which to file their written comments and/or objections to the defendants' proposed EPSDT plan. (SE) Allen Sharp, Judge (copies to counsel)

4/ 9/75 Theodore Sendak, Att. Gen. of Ind. files Response to Deft's Motion for Production of Documents with cer. of ser. HB

4/ 9/75 Norman D. Curry, Deputy Att. Gen. enters his appearance for defts. HB

4/29/75 Pltfs. file Comments and Objections Regarding Defts. Proposed EPSDT Plan, with cer. of ser. thereon.

3/19/75 Return receipt received showing that file received at Ct. of Appeals on 3/17/75.

5/ 8/75 Defendants, Indiana State Department of Public Welfare, file Motion for Enlargement of Time.

5/15/75 Order Entered: It is Ordered that the defts., Ind. State Dept. of Public Welfare be allowed

until and including May 23, 1975 to plead and answer in this cause. (SE) Sharp, Judge. Copies to counsel.

6/ 2/75 Defts. file Interrogatories to Pltfs and Purported Class, with cer. of ser. thereon.

6/ 6/75 Certified Copy of Order received from U. S. Court of Appeals:

Pursuant to Rule 39 of the Federal Rules of Appellate Procedure, and after having prevailed on appeal, plaintiffs-appellees have applies to this court for costs and attorneys' fees on appeal. *Alyeska Pipeline Service Co. v. The Wilderness Society,* 43 U.S.L.W. 4561 (U.S. May 12, 1975), forecloses an award of attorneys' fees on a private attorney general rationale in the absence of statutory authorization as in this case. Additionally, this is not an appropriate case for utilization of the "common benefit" or "common fund" theory. *Townsend v. Edelman,* slip op. Nos. 73-1960, 1961 at 11 (7th Cir., June 2, 1975); *Satoskar v. Real Estate Commission,* slip op. No. 74-1946 (7th Cir., June 2, 1975). Finally, our examination of the record on appeal convinces us that the defendants-appellants were not in bad faith in prosecuting this appeal. The plaintiffs-appellees' request for attorneys' fees on appeal is denied and the Clerk is ordered to award costs to the plaintiffs in the amount of $67.90.

6/ 9/75 Pltfs. file Report on Meeting Of Counsel And Request For Conference With Court, with cer. of ser. thereon.

7/ 3/75 Plaintiff files Objections to Defendant's Interrogatories with Cert. of Service Attached. kg

8/ 7/75 Pltfs. file Motion to Schedule Conference.

8/ 8/75 Order entered: Pursuant to pltf.'s Motion, a conference is hereby scheduled for the 28th day of Aug., 1975 at 1:00 P.M. for the purpose of discussing the pltf.'s objections to the defts. proposed EPSDT plan. (SE) A. Sharp. (copies to counsel) kg.

8/25/75 Plaintiffs file Memorandum Regarding Non-Complaince of Defendants' Proposed Plan with certificate of service thereon. MS

8/27/75 Deposition of George N. Nichols filed.

8/27/75 Deposition of David Webster filed.

8/27/75 Deposition of Wayne Stanton filed.

8/27/75 Order Entered: A conference with all counsel in the above case is hereby scheduled for Wed., Oct. 15, 1975 at 5:00 p.m. in chambers. (SE) A. Sharp (copies to counsel) kg

9/ 3/75 Deft. files Motion for Continuance with Cert. of Service attached. kg

Order Entered: It is Therefore Ordered, Adjudged and Decreed by this Court that the above named Defts. be allowed until the 15th day of October, 1975 within which to further plead and answer in this case. (SE) A. Sharp. (copies to counsel) kg

9/ 3/75 Plaintiffs file Interrogatories propounded to defendant Stanton with certificate of service thereon. MS

10/ 1/75 Defendants' file Answers to Pltfs'. Interrogatories, with cer. of ser. thereon. aj

10/ 8/75 Order entered: The conference with all counsel in the above case scheduled for Wednesday, October 15, 1975 at 5:00 o'clock P.M. is hereby cancelled and set aside. SE. Allen Sharp, Judge copies to counsel HB

3/10/76 Certified copy of order received from Court of Appeals AFFIRMING decision of this court. HB

(1 vol. of pleadings returned)

3/17/76 Notice sent setting cause for a motion and status call at 10:30 A.M. on June 17, 1976. SE Allen Sharp, Judge copies to counsel HB

5/ 7/76 Received Order from Court of Appeals: It appearing that the portion of this court's order of Feb. 19, 1976 denying appellees' application for costs of printing briefs on appeal was entered through clerical error, It Is Hereby Ordered that said order is correction to deny only that portion of appellees' application requesting the award of attorneys' fees.

It Is Further Ordered that the Clerk of this Court prepare an itemized statement of costs containing those costs submitted in appellees' application that are otherwise recoverable under F.R.A.P. 39 (c) and transmit such itemized

statement to the Clerk of the District Court forthwith. HB

6/10/76 Spoke with Mr. Sanford. Clerks office Ct. of Appeals—he has 1 Vol. of Pleadings—1 Vol. of transcripts and 1 Vol. of Depositions (3 Dep's missing)